

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. MMC 41232 et al.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A mining claimant seeking the small miner exemption from payment of mining claim rental for the 1994 assessment year must have filed an exemption certificate for that year on or before Aug. 31, 1993.

APPEARANCES: Jesse L. Cleary, Helena, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Jesse L. Cleary has appealed from an October 27, 1993, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Linda Lee No. 1 Placer, Linda Lee No. 1 Lode, Horse Fly Lode, and Horse Fly Placer mining claims (MMC 41232, MMC 109963, MTMMC 184471, and MTMMC 184477) abandoned and void for failure to either pay annual rental as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), and 43 CFR 3833.1-5, or satisfy filing requirements imposed by 43 CFR 3833.1-7(d) for exemption from payment of such fee for the assessment year ending September 1, 1994. On August 20, 1993, Cleary and his co-claimants filed a "Certificate of Exemption From Payment of Rental Fee (Form 3830-1)" with BLM for "the assessment year beginning at noon on September 1, 1992, and ending at noon on September 1, 1993." They also filed affidavits of labor for the claims at that time. No certificate of exemption for the 1994 assessment year, however, was filed. As a result, BLM found the claims to be abandoned and void.

On appeal, Cleary argues that he had insufficient time to comply with the new payment requirements. He asserts that the "Government always gives 90 days on these kind of changes" but did not do so in this instance. He also contends that a BLM employee gave him the form he filed, telling him "that was all [he] needed," and that he filled it out and sent it in as he was instructed to do. He argues that nothing on the form indicates he must apply for exemption from payment for both the 1994 and 1993 assessment

years. Finally, he argues that he has worked these claims located on Forest Service land in accordance with Forest Service rules and that BLM should not be involved in their administration.

The Act provides that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." Id. at 1379. A mining claimant must either make his rental fee payment or certify his qualification for exemption from such payment and election to perform the assessment work to the Secretary by August 31, 1993. Id. at 1379. The question raised by this appeal is not, therefore, whether Cleary was individually notified of the new rental requirements; enactment of the statute gave sufficient notice of the new requirement. Keith Lindsey, 130 IBLA 346, 348 (1994). Notice of the requirement to pay rental fees was published in the Federal Register, as were the subsequently promulgated rules. 57 FR 54102 (Nov. 16, 1992); 58 FR 38186 (July 15, 1993). Accordingly, this argument must be rejected. See Lanny Perry, 131 IBLA 1, 4 (1994), and authorities cited therein. Further, Cleary demonstrated as a matter of fact that he had time enough to comply with the new requirements when he timely filed for exemption from payment of rental for the 1993 assessment year on August 20, 1993. Id.

Nor can alleged reliance on incomplete information from a BLM employee relieve him from requirements imposed by statute or regulation. See 43 CFR 1810.3. Advice from BLM upon which reliance is predicated so as to support a claim of estoppel must appear as a crucial misstatement in an official decision. See Steven E. Cate, 97 IBLA 27, 32 (1987), and authorities cited. No such decision was issued in this case. In these cases the responsibility for satisfying rental fee requirements imposed by the Act rests with claim holders (rather than with BLM) since the Act provides "that failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant" (106 Stat. 1379). As the Board explained in Nannie Edwards, 130 IBLA 59, 60 (1994), "failure to qualify for the small miner exemption or to pay the \$100 claim rental on or before August 31, 1993, resulted in extinguishment of the affected claims by operation of law notwithstanding [an] intention to continue to hold them."

[1] Cleary denies that separate exemption certificates are required for both the 1993 and 1994 assessment years. The Act, however, indicated that separate certificates should be filed, and the implementing Departmental regulation at 43 CFR 3833.1-7(d) states: "The small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner's exemption is claimed." This requirement is explained in the preamble to rulemaking where BLM points out that a claimant is not required to apply simultaneously for both assessment years, so long as both applications are filed by the stated deadline. 58 FR 38194; cf. 43 CFR 3833.1-5(e) (claimant may elect to file for exemption for one year and pay the rental fee for the other). The certificate filed by Cleary was limited to the 1993 assessment year. Since no certificate of exemption was filed for the 1994 assessment year, there was no claim

of exemption made for 1994 and the small miner exemption was lost. BLM correctly determined that, as a matter of law, the mining claims then became abandoned and void for failure to pay annual rental fees owed for the 1994 assessment year by August 31, 1993. Lanny Perry, supra.

Since Cleary failed to certify that he qualified for a small miner exemption for the 1994 assessment year, he was required to pay the required rental fee for the claims on or before August 31, 1993. Because there is no evidence in the record of payment of the 1994 fee, his failure to timely satisfy the requirements of the Act and implementing regulations resulted in a conclusive presumption of abandonment.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur:

James L. Burski
Administrative Judge